IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22388 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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JAYESHBHAI BHANJIBHAI MAKWANA - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 2 - Respondent(s)

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Appearance :
MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 13/12/2005

ORAL JUDGMENT

1.Jayeshbhai Bhanjibhai Makwana, petitioner has filed this habeas corpus petition under Article 226 of the Constitution of India for quashing and setting aside

the order of detention dated 30/8/2005 passed by the District Magistrate, Bhavnagar. Petition was filed on 14/11/2005. On 18/11/2005, this Court (Coram:K.M.Mehta,J.) has issued rule which is returnable on 8/12/2005. Hence, matter has been placed for hearing to this Court.

2.Heard Mr.D.R.Kachhavah, learned advocate on behalf of the petitioner. On behalf of respondent, Mr.L.R.Pujari, learned APP appears.

3.Mr.Kachhavah, learned advocate for the petitioner has invited my attention to the order of detention dated 30/8/2005 passed by the authority under Section 3(2) of the provisions of PASA Act. Detenu was also sent to the prison on the same day and detained in Sub Jail, Himmatnagar. He has also invited my attention to the grounds supplied by the authority to the petitioner on 30/8/2005. In the grounds of detention, it is stated that petitioner has committed three offences which are as under:

1. Offence registered at 'B' Division Police Station, Bhavnagar in connection with Cr. Case No.293 of 2005 dated 15/4/2005 under the provisions of Section 66(B),

65(A)(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner was storing 47 bottles of country made foreign liquor valued at Rs.2,350/- and Bajaj Scooter valued at Rs.5,000/- (total Rs.7350/-).

2. Offence registered at Shihor Police Station, Bhavnagar in connection with Cr. Case No.149 of 2005 dated 28/7/2005 under the provisions of Section 66(B), 65(A)(E), 166(B) and 81 of the Bombay Prohibition Act. It is alleged that petitioner was storing 236 bottles of country made foreign liquor valued at Rs.70,800/-, one Bolero Gadi valued at Rs.3,00,000/-, one Honda Motor Cycle valued at Rs.25,000/-, cash of Rs.2,700/- (total Rs.3,98,500/-).

3. Offence registered at Shihor Police Station, Bhavnagar in connection with Cr. Case No.150 of 2005 dated 28/7/2005 under the provisions of Section 66(B), 65(A)(E), 166(B) and 81 of the Bombay Prohibition Act. It is alleged that petitioner was storing 76 bottles of country made foreign liquor valued at Rs.18,525/-.

4. The authority has also stated that as petitioner is carrying on anti social activities as carrying on business of liquor and therefore, he is 'bootlegger'

under the provisions of the PASA Act as the activities of the petitioner affects the public health in this behalf.

5.Relying upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, learned advocate for the petitioner has stated that authority ought not to detain petitioner only on the ground that he is a 'bootlegger'. Even if the authority could not be subjectively satisfied under the provisions of Section 3(2) of the PASA Act and detained the petitioner. There is no breach of public order. There is only breach of law and order.

6.The learned counsel for the petitioner submitted that petitioner cannot be held as a 'bootlegger' within the meaning of PASA Act. There can be breach of law and order situation but not public order. For the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and also relied upon judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the

Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

7. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention.

8. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana (supra) and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

9. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court

(Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

10.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

11.In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Jayeshbhai Bhanjibhai Makwana, detenu is ordered to be set at liberty forthwith if he is not

required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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